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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,787	04/26/2000	Yuriko Kishitaka	SONYJP3.0-114	1701

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LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

EXAMINER
LONSBERRY, HUNTER B

ART UNIT	PAPER NUMBER
2623	

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action *Before the Filing of an Appeal Brief*	09/558,787	KISHITAKA ET AL.
	Examiner	Art Unit	
	Hunter B. Lonsberry	2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>31 July 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>4</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _____.

    Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see below.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).

13. ☐ Other: _____.

JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Applicant argues that it is unclear as to why the Examiner is relying on the 1394 reference and it is unclear to the applicants how the teachings and advantages of the 1394 reference are relevant to the deficiencies of Howe and Metz and why there would be motivation to combine the references (pages 8-9).

Regarding Applicant's argument, the 1394 reference is relied upon to teach the following elements a memory containing a pre-stored bit-rate value that indicates the bit-rate of the transport stream before receipt of the transport stream and corresponding to a source of origin of the broadcast, and performing these steps in response to a power on signal. In particular, the 1394 reference discloses, that in response to a power on signal, a receiver receives information regarding the bandwidth (bitrate) of the transport stream data to be transmitted as well as the source of the data during a handshake operation, this bandwidth is then utilized for the transmission of data (pages 19-20, 209-227, 241-242 and 343-351) in order to ensure that data is routed properly to the correct device at the correct bandwidth. Thus the motivation to combine is the use of this handshaking operation, which provides the benefit of ensuring data, is routed to the correct device at the correct bandwidth.

Applicant argues the following "In relying on Bruls, the Examiner states that "additionally the bit rate may be a prestored value based on the average bit rate of the incoming transport stream signals over time)paragraphs 22, 26 and 28) thus maximizing the available buffer space by utilizing a bit rate as appropriate for the content signal." "Applicants respectfully submit that even if the Bruls reference disclose that the bit rate may be a prestored value, "may be" or mere possibilities is not legally sufficient to establish or teaching. In fact, mere possibilities are not sufficient to establish inherency nor do they suggest the teaching, which they may be cited for. Furthermore, applicants respectfully submit that Burls does not teach prestoring an incoming bitrate value. (Pages 11-12).

The Examiner disagrees. The Examiner requests clarification as to where an inherency argument with respect to Bruls was made in the Final Rejection, as it appears Applicant is putting words in the Examiner's mouth. The "may be" language refers to functional capability. Bruls has the capability to interact with both CBR and VBR data. In particular, a bit rate value may be preset prior to the transfer of data, then the system detects the actual average incoming bitrate and adjusts it. (see paragraphs 25-26 for more discussion). The Examiner requests clarification as to where it is required in the MPEP that a feature be present in each embodiment of a reference in order for it to be a valid teaching.

Applicant argues that hindsight was used, there is no motivation to combine, that Bruls includes no motivation or suggestion for combing with Surine. (pages 13-16).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See In re Gorman, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).
In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With regards to motivation to combine, Metz's teachings provide the advantages of providing more bandwidth for each channel via the use of a demux. The 1394 reference provides the advantages of ensuring that data is routed properly to the correct device at the correct bandwidth. Bruls's teachings provide the advantage of maximizing the available buffer space by utilizing a bitrate that is appropriate for the content signal. Surine provides the advantage of ensuring that a buffer would be available as soon as possible.

Further the Examiner notes that Bruls is not making a modification to Surine as argued by Applicant. The body of the Final Rejection ·clearly states it is the opposite; Surine is modifying the combination of Howe, Metz, 1394 and Bruls.